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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,627	06/15/2001	John G. Ciesar	5557-8	8478

7590

10/06/2003

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/06/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/882,627

Applicant(s)

CIESAR ET AL.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the corresp ndence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 35-55 is/are pending in the application.
- 4a) Of the above claim(s) 52-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 35-51, drawn to a batting swing trainer, classified in class 473, subclass 457.
  - II. Claims 52-55, drawn to a system for teaching and testing a person's proper hand placement and body movement, classified in class 473, subclass 422.
2. Newly submitted claims 52-55 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: *The product as claimed can be used in a materially different process of using that product and does not need the specific steps of the process, such as the periodically testing the teaching progress.*

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 52-55 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Specification*

3. The abstract of the disclosure is objected to because the phrase "or the like" include(s) elements not actually disclosed (those encompassed by "or the like") in the specification and claims, thereby rendering the scope of the invention unascertainable. Correction is required. See MPEP § 608.01(b).

***Claim Objections***

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Misnumbered claims 33-53 been renumbered 35-55. ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 35 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Kallassy (WO 99/26705).

Regarding claim 35, Kallassy shows a swing trainer for training players in golf or baseball. Kallassy only describes the specifics for the trainer when used in golf, but contemplates that similar concepts can have application for training in other sports such as baseball. The swing trainer including a shaft (12) having first and second ends, a handle (14) attached to the first end of the shaft (12), a head (16) attached to the second end of the shaft (12), and a graspable slide (20) sized to accommodate all of the fingers of a user's hand (see figures 7B and 7C) for striking the head (16) to produce an audible signal (see page 9, lines 7-10), the slide (20) being mounted on the shaft (12) for axial sliding movement between the handle (14) and the head (16), a stop (18) attached adjacent the handle (14), and the graspable slide (20) having first and second ends

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(see figures 5, 13 and 14) and including first and second buffers at its first and second ends (in figure 5, the flared portion 24 on one end and the notched section on the opposite end; in figure 13 the flared section on one end and the stop means 202 on the opposite end; in figure 14, the flared section on one end and the recessed notched 29 section on the other end), the first buffer limiting movement of the graspable slide toward the handle (14) by contacting the stop (18) adjacent the handle (14) and the second buffer limiting movement of the graspable slide (20) toward the head (16) by contacting the head (16).

Regarding claim 43, Kallassy shows the handle (14) is covered with a leather wrap, foam grip or other suitable material and the slide is covered with a leather wrap, foam grip or other suitable material to match the covering of the handle (see page 8, lines 9-11).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Mollica (5,360,209) and/or Duran (5,577,966).

Regarding claim 36, Kallassy in the golf embodiment shows the shaft (12) to have a substantially uniform circumference (see figure 1). Kallassy is silent as to the type of bat used for training. Both Mollica and/or Duran show training bats, wherein the shaft has a substantially uniform circumference. It would have been obvious in view of Mollica and/or Duran to have

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utilized a bat for the training device of Kallassy having a uniform shaft, so that the slide is easily moveable on the shaft.

9. Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Anderson (4,898,386).

Regarding claim 37, Kallassy is silent as to the shaft being hollow or providing weight within the shaft instead of on the shaft. Anderson shows a training bat (1) comprising: a handle portion (5), a hitting portion (7) and a hollow chamber (23). Anderson shows the player can adjust the weight (33) by adding or removing weights in order to increase strength while practicing his swing. The weight is increased if the desired result is to achieve increased strength. The weight is removed or reduced if the desired result is to achieve increase speed. The weight is adjusted until the desired weight and balance is achieved, in order to produce an effective training aid for each player. Anderson shows weights that are insertable into the hollow chamber (23) of the handle end (5) of the bat (see column 3, lines 63-67). Anderson shows a knob (29) at the distal end of the training bat (see figure 1).

Regarding claims 38 and 39, Kallassy is silent as to the type of weight that can be used in combination with the swinging implement (e.g. club or bat). Anderson shows the weight to be a solid rod (33) positioned within the training bat, wherein the weight can be varied depending on the intended results needed. Absent a showing of new or unobvious results it would have been obvious to include varying weights in the form of rod(s) within the training implement of Kallassy in order to alter the force when the player swings the bat.

Regarding claims 40 and 41, Kallassy shows that the head (16) can be alternatively replaced by a weight (330) or other non-conventional terminations. Additionally, Kallassy

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teaches positioning the weight at various locations on the shaft. However, Kallassy does not show interchangeable heads of differing weights. Anderson shows any amount weight can be added or subtracted in order to achieve the desired results. The weights (33) can be added or removed in order to increase strength while practicing swing movement. The weight is increased if the desired result is to achieve increased strength. The weight is removed or reduced if the desired result is to achieve increase speed. The weight is adjusted until the desired weight and balance is achieved, in order to produce an effective training aid for each player. It would have been obvious in view of Anderson to do the same for Kallassy's trainer.

10. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Uke (5,303,917).

Regarding claim 42, Kallassy is silent as to the details of the training bat. Therefore, he does not disclose if an end cap could be used. The inclusion of weights on training implements is old and conventional. This feature is also shown by Uke. Uke shows a training bat, wherein the weight can be in the form of shots or slugs and it can be center loaded or positioned in the end cap (see figure 6; also column 6, lines 40-68). Absent a showing of new or unobvious results it would have been obvious to include weights in the end cap portion of Kallassy's modified bat in order to increase the force when the player swings the bat.

11. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 99/26705) in view of Bratt (3,955,816).

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Regarding claim 44, Kallassy teaches alternative handles (see page 12, lines 1-7). However, Kallassy does not expressly disclose that the handles are removable. To provide handles that are integral or releasably removed with respect to the shaft is well known in the sports art and demonstrated by Bratt. Bratt shows a warm-up bat wherein the bat has a series of different sized interchangeable handles which fasten and unfasten from the tubular section to permit access to the hollow chamber and to allow change to the effective size of the bat (see claim 4). It would have been obvious in view of Bratt to have provided the same for Kallassy's bat and/or club.

12. Claims 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallassy (WO 9900/26705).

Regarding claim 45, Kallassy shows the stopping means (202) comprises a ring (the stop means is ring-shaped; see page 12, line 10 and 11) secured to the shaft (12).

Regarding claim 46, in an alternative embodiment Kallassy shows the stop (202) comprises first and second portions adapted to fit together to form a ring around the shaft (see figure 12).

Regarding claim 47, Kallassy shows the slide (20) has means on one end (24) for contacting the stopping means (22), and protecting the user's hands from being pinched (see page 9, lines 1-7); and means on the other end for contacting the head and protecting the user's hands from being pinched. Kallassy also shows buffer means (24) positioned on the end of the slide that has a diameter larger than the diameter of the slide (see page 9, lines 13-18; also see figure 3). Kallassy further shows the contacting and protecting means are rings (see figure 5,



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wherein the upper and lower sections of the slide form ring-like formations) affixed to the distal ends of the slide (20)

Regarding claim 48, as best seen in figure (5), Kallassy shows the handle and slide have substantially the same diameter. Alternatively, Kallassy teaches that the handle and slide can be substantially cylindrical (see page 12, lines 3-7).

Regarding claims 49 and 50, Kallassy does not expressly disclose the use of aluminum or metal alloy for the shaft and handle. However, the aforementioned materials are well recognized in the art, and it would have been obvious to use either one for the practice device of Kallassy. Official Notice is taken of such.

Regarding claim 51, Kallassy shows a mechanical means for emitting an audible signal (see page 9, lines 8-10).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T Sewell can be reached on 703-308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

MA

29 September 2003

  
**MITRA ARYANPOUR**  
**PATENT EXAMINER**